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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

Commodity Futures Trading Commission,

Plaintiff,

v.

Ooki DAO (formerly d/b/a bZx DAO), an
unincorporated association,

Defendant.

**CIVIL ACTION NO: 3:22-cv-05416-
WHO**

Hon. William H. Orrick

**PLAINTIFF'S MOTION FOR ORDER
FOR FINAL JUDGMENT BY
DEFAULT, PERMANENT
INJUNCTION, CIVIL MONETARY
PENALTIES, AND OTHER
STATUTORY AND EQUITABLE
RELIEF AGAINST DEFENDANT
OOKI DAO**

NOTICED HEARING
DATE AND TIME: Wednesday,
May 17, 2023, at
2:00 p.m.

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Plaintiff Commodity Futures Trading Commission (“Commission”) hereby gives notice that a hearing on its Motion for Order for Final Judgment by Default, Permanent Injunction, Civil Monetary Penalties, and Other Statutory and Equitable Relief Against Defendant Ooki DAO (“Motion”) will take place on Wednesday, May 17, 2023 at 2:00 p.m. at the United States District Court for the Northern District of California, San Francisco Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, Courtroom 2, 17th Floor.

The Motion requests that the Court enter an Order for Final Judgment By Default, Permanent Injunction, Civil Monetary Penalties, and Other Statutory and Equitable Relief Against Defendant Ooki DAO.

POINTS AND AUTHORITIES

I. STATEMENT OF ISSUE TO BE DECIDED

This Motion presents the following issue to be decided by the Court:

1. Whether a default judgment is appropriate against an entity that transformed itself from an LLC into a DAO with the express goal of continuing to offer an unlawful trading platform without legal accountability, when that DAO acknowledged receipt of the Complaint in this action, publicly debated whether and how to respond, and (as this Court has ruled) has been served pursuant to applicable rules, yet ultimately chose not to appear to defend this action.

II. STATEMENT OF FACTS

In support of its Motion, the Commission states the following facts:

1. On September 22, 2022, the Commission filed a Complaint against the Ooki DAO (formerly doing business as the bZx DAO), alleging violations of Sections 4(a) and 4d(a)(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 6(a), 6d(a)(1), and Commission Regulation (“Regulation”) 42.2, 17 C.F.R. § 42.2 (2021). ECF No. 1.

2. The Commission incorporates by reference the facts as alleged in the Complaint.

ECF No. 1 ¶¶ 10-50.

3. For example, as alleged in the Complaint, the founders (“bZx Founders”) of bZeroX, LLC (“bZeroX”) stated publicly that an objective in transferring control of bZeroX’s trading platform (the “bZx Protocol,” later renamed the “Ooki Protocol”) to the bZx DAO (which later renamed itself the Ooki DAO) was to circumvent regulatory enforcement:

It’s really exciting. We’re going to be really preparing for the new regulatory environment by ensuring bZx is future-proof. So many people across the industry right now are getting legal notices and lawmakers are trying to decide whether they want DeFi companies to register as virtual asset service providers or not – and really what we’re going to do is take all the steps possible to make sure that when regulators ask us to comply, that we have nothing we can really do because we’ve given it all to the community.

ECF No. 1 ¶ 3.

4. On January 17, 2023, pursuant to Fed. R. Civ. P. 55(a), a Clerk’s Entry of Default was entered against the Ooki DAO. ECF No. 65.

III. ARGUMENT

The Court should grant the Motion. This Court is empowered to do so taking well-pleaded Complaint allegations as true and without a hearing on damages. The CFTC has established subject matter and personal jurisdiction, venue, and all other procedural requirements to enter a default judgment. The CFTC has also established Defendant’s violations of the Commodity Exchange Act (“Act”), 7 U.S.C. § 1-27f, and Commission Regulations (“Regulations”), 17 C.F.R. pts. 1-190 (2022). Given this, Ninth Circuit law strongly favors a default judgment. Finally, the CFTC’s requested remedies are adequately supported and fall squarely within those authorized by the Act and Regulations.

A. This Court is Empowered to Enter a Default Judgment.

After a defendant has failed to plead or otherwise defend an action, and the clerk has entered default against the defendant, a plaintiff may apply to the court for a judgment by

1 default. *See* Fed. R. Civ. P. 55(b)(2). In considering such a motion, a court must first determine
2 that it possesses “jurisdiction over both the subject matter and the parties.” *In re Tuli*, 172 F.3d
3 707, 712 (9th Cir. 1999). The decision to enter default judgment is then left to the sound
4 discretion of the court. *See Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980).

5
6 In exercising such discretion, courts in this circuit may consider the factors set forth in
7 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). These factors include: (1) the
8 possibility of prejudice to the plaintiff if the motion is denied; (2) the merits of plaintiff’s
9 substantive claim; (3) the sufficiency of the complaint; (4) the amount of money at stake; (5) the
10 possibility of a dispute concerning any material facts; (6) whether default was due to excusable
11 neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring
12 decisions on the merits. *Id.* Applying these factors, “default judgments are more often granted
13 than denied.” *PepsiCo, Inc. v. Triunfo-Mex, Inc.*, 189 F.R.D. 431, 432 (C.D. Cal. 1999).

14
15 In assessing requests for default judgments, the well-pleaded factual allegations of the
16 complaint are taken as true. *Fair Hous. of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002).

17
18 **B. The CFTC Has Established Jurisdiction and Venue.**

19 This Court has jurisdiction over this action under 28 U.S.C. § 1331 (federal question
20 jurisdiction) and 28 U.S.C. § 1345 (jurisdiction over civil actions commenced by the United
21 States or by any agency authorized to sue by Act of Congress). The CFTC is authorized to seek
22 injunctive and other relief in a U.S. district court whenever it appears that any person has
23 violated the Act or Regulations. Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a).

24 The Court has personal jurisdiction over all parties because they transacted business
25 within this District and otherwise engaged in acts and practices in violation of the Act and
26 Regulations (for example, by unlawfully offering unregistered transactions) in this District,
27 among other places.
28

Venue is proper in this District for the same reasons. Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e).

C. The CFTC Has Satisfied the Necessary Procedural Requirements for Default Judgment.

The Clerk of this Court has entered a default against the Ooki DAO. ECF No. 65. The Ooki DAO has not appeared personally or by a representative, so the requirement in FRCP 55(b)(2) to serve the Ooki DAO or its representative with written notice of the Motion at least seven days before the hearing does not apply. Nevertheless, as set forth in the Certificate of Service accompanying this Motion, the CFTC has served the Ooki DAO with this Motion as well as related papers.

D. The *Eitel* Factors Weigh in Favor of Entering Default Judgment Against the Ooki DAO.

Each *Eitel* factor (set forth above) weighs in favor of granting the CFTC's request for default judgment.

Regarding the first *Eitel* factor, the CFTC will be prejudiced if default judgment is not entered because it "will be deprived of the opportunity to obtain judicial resolution of its claim[s]." *Sky Billiards, Inc. v. Loong Star, Inc.*, No. EDCV 14-921 JGB (SPx), 2016 WL 6661175, at *5 (C.D. Cal. Mar. 17, 2016); *see also Halsey v. Colonial Asset Mgmt.*, No. 5:13-cv-02025, 2014 WL 12601015, at *4 (C.D. Cal. July 17, 2014) (concluding plaintiff lacked remedy in absence of default judgment where defendant failed to file responsive pleading). The CFTC has strong, congressionally mandated interests in enforcing the Act and Regulations, ensuring compliance with registration obligations to protect members of the public from harm, and deterring future wrongdoing through penalties, among other monetary relief. Yet the Ooki DAO's refusal to appear and defend will continue to deprive the CFTC of the opportunity to obtain judgment on the merits. This factor thus supports a default judgment. *See SEC v.*

1 *Fortitude Grp.*, No. 16-50 Erie, 2017 WL 818604, at *2 (W.D. Pa. Feb. 10, 2017) (granting
2 SEC’s motion for default judgment because SEC would “be prejudiced by its inability to
3 effectively enforce federal securities laws” if motion were denied).

4 The second and third factors also weigh in favor of default judgment. As discussed
5 below (*see infra* Section III.E), the CFTC’s claims are meritorious, and the Complaint is
6 sufficient on its face to state the claims set forth therein.

7
8 Fourth, “the amount of money at stake in relation to the seriousness of the defendant’s
9 conduct” weighs in favor of a default judgment. *PepsiCo, Inc. v. Los Potros Dist. Ctr., LLC*, No.
10 CV-07-2425, 2008 WL 942283, at *3 (D. Ariz. Apr. 7, 2008). The civil monetary penalties the
11 CFTC seeks from the Ooki DAO are consistent with awards and penalties in similar enforcement
12 actions. *See, e.g., CFTC v. Laino Group Ltd. d/b/a PaxForex*, No. 4:20-cv-03317, 2021 WL
13 4059385, at *8 (S.D. Tex. June 30, 2021), ECF No. 21 (default order) (imposing \$374,864 CMP
14 on defendant who committed similar registration violations to those in this case, reflecting, as
15 here, imposition of inflation-adjusted per-violation CMPs, in amounts specified by 17 C.F.R. §
16 143.8); *see also, e.g., In re Payward Ventures, Inc. (d/b/a Kraken)*, CFTC No. 21-20, 2021 WL
17 4501468 (Sept. 28, 2021) (imposing \$1.25 CMP in connection with similar registration
18 violations to those in this case). Moreover, the Ooki DAO’s registration violations are
19 significant and go to the heart of a regulatory regime aimed at protecting U.S. commodity
20 markets and their users. The CFTC’s requested relief is therefore reasonable. *See Sky Billiards*,
21 2016 WL 6661175, at *5 (entering default judgment and noting that the “award [was] consistent
22 with other default judgment awards in the context of [similar cases]”).

23
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25 Fifth, the remote possibility of a dispute as to material facts weighs in favor of a default
26 judgment. The Complaint details the Ooki DAO’s violations of law and transformation into a
27 DAO in an effort to avoid compliance obligations and regulatory enforcement. The Complaint
28

1 alleges facts not disputed by bZeroX or the bZx Founders in the bZeroX Administrative Order
2 and which are largely reflected in public materials such as the Ooki DAO's website. Given this,
3 the likelihood of a factual dispute on a material issue is remote. *See also Sky Billiards*, 2016 WL
4 6661175, at *5 (recognizing that the defendant's failure to respond "supports the conclusion that
5 the possibility of a dispute as to the material facts is minimal").
6

7 Sixth, there was no excusable neglect for the default because the Ooki DAO was properly
8 served with the Summons and Complaint, publicly discussed whether and how to respond, and
9 chose not to appear and defend itself. *See* ECF No. 63 at 8-9 (Order in which this Court
10 concluded that "[i]f the DAO fails to appear, it will be because of its strategic decision, not
11 because it was unaware of the lawsuit"); *Halsey*, 2014 WL 12601015, at *4 (recognizing that
12 proper service of process supports a finding that default is not due to excusable neglect). Thus,
13 the Ooki DAO's default cannot be excused.
14

15 Finally, the seventh *Eitel* factor—the general preference for deciding cases on the
16 merits—does not counsel against a default judgment here because "[d]efendant[s'] failure to
17 answer Plaintiffs' Complaint makes a decision on the merits impractical, if not impossible."
18 *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002) (noting the on-the-
19 merits "preference, standing alone, is not dispositive") (citation omitted). In addition,
20 countervailing interests outweigh any residual interest in preserving the remote potential for a
21 merits decision. "[T]he CFTC is the statutory guardian entrusted with the enforcement of the
22 congressional scheme for safeguarding the public interest in commodity futures markets." *See*
23 *Stephen Bronte, Advisors, LLC v. CFTC*, 90 F. App'x 251, 252 (9th Cir. 2004) (internal
24 quotations and citations omitted). Absent a default judgment and the concomitant penalties and
25 injunctive relief, the CFTC will be unable to address and deter the misconduct at issue. This
26 weighs in favor of a default judgment.
27
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E. Defendant Is Liable for Violations of the Act and Regulations as Alleged in the Complaint.

As discussed above, the second and third *Eitel* factors “require that plaintiffs’ allegations ‘state a claim on which the [plaintiff] may recover.’” *Siwec v. Shyun Sun*, No. CV 12-6410-CBM (MANx), 2013 WL 12130002, at *2 (C.D. Cal. Feb. 20, 2013) (quoting *Kloepping v. Fireman’s Fund*, No. C 94-2684, 1996 WL 75314, at *2 (N.D. Cal. Feb. 13, 1996)). Here, the CFTC’s Complaint clearly states a claim.

1. Defendant Engaged in Unlawful Off-Exchange Leveraged and Margined Retail Commodity Transactions in Violation of Section 4(a) of the Act, 7 U.S.C. § 6(A) (Count One).

Virtual currencies such as ETH, DAI, and others traded on the Ooki Protocol are “commodities” under the Act. *See, e.g., United States v. Reed*, No. 20-cr-500 (JGK), 2022 WL 597180, at *3-5 (S.D.N.Y. Feb. 28, 2022); *CFTC v. McDonnell*, 287 F. Supp. 3d 213, 228-29 (E.D.N.Y. 2018); *In re Coinflip, Inc.*, CFTC No. 15-29, 2015 WL 5535736, at *2 (Sept. 17, 2015).

The transactions offered on the Ooki Protocol fall within Section 2(c)(2)(D) of the Act, 7 U.S.C. § 2(c)(2)(D). That section applies to “any agreement, contract, or transaction in any commodity that is . . . entered into with, or offered to (even if not entered into with), a [non-eligible contract participant (“non-ECP”)]¹ . . . on a leveraged or margined basis . . .” and which does not result in actual delivery within 28 days (hereafter, “leveraged or margined retail commodity transactions”). Act § 2(c)(2)(D)(i), (ii)(III)(aa), 7 U.S.C. § 2(c)(2)(D)(i), (ii)(III)(aa). Therein, “leveraging refers generally to the ability to control high-value amounts of a commodity

¹ An eligible contract participant (“ECP”) is, in general, an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of \$10 million, or \$5 million if the individual enters into the transaction “in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual.” Section 1a(18)(xi) of the Act, 7 U.S.C. § 1a(18)(xi). As used herein, a “non-ECP” is an individual who does not meet that definition.

1 or a security with a comparatively small value of capital, known as the margin.” *CFTC v.*
 2 *Hunter Wise Commodities, LLC*, 749 F.3d 967, 976 (11th Cir. 2014). Transactions on the Ooki
 3 Protocol were leveraged and margined: traders can transfer to Ooki Protocol smart contracts “a
 4 comparatively small volume of capital” (the margin) to “control high-value amounts of a
 5 commodity” (the leverage); and, notably, the Ooki DAO refers to its own products as leveraged
 6 and margined.²

8 Transactions on the Ooki Protocol are “offered to” and “entered into with” non-ECPs
 9 within the meaning of 7 U.S.C. § 2(c)(2)(D). A transaction falls within that section regardless of
 10 who “offers” the transaction to, or “executes” the transaction with, a non-ECP; it is the existence
 11 of the transactions themselves, not the identity of their offerors or executors, which triggers
 12 application of the Act. *See, e.g., Hunter Wise*, 749 F.3d at 978 (noting that even if Hunter Wise
 13 had not engaged in the retail commodity transactions at issue, and instead had merely provided a
 14 platform to facilitate leveraged and margined retail commodity transactions between customers
 15 and third-party dealers, the CFTC would still have jurisdiction over the transactions under
 16 7 U.S.C. § 2(c)(2)(D) because “the Commission’s jurisdiction is over the transactions
 17 themselves”). Here, such transactions are offered to and entered into with non-ECPs because
 18 they are offered to and entered into with anyone and everyone who wishes to transact on the
 19 Ooki Protocol—for example, the Ooki DAO website does not limit access to the Ooki Protocol
 20 to ECPs.³

24 ² *See, e.g.,* <https://docs.ooki.com/protocol/trade/leverage> (last visited April 5, 2023) (discussing “leverage in . . . margin trading” available on the Ooki Protocol).

25 ³ While the CFTC need not establish the following to trigger 7 U.S.C. § 2(c)(2)(D), it is, indeed, the Ooki
 26 DAO who offers and enters into such transactions. The Ooki DAO “offers” such transactions to non-ECPs by
 27 soliciting members of the public to utilize its website to access the Ooki Protocol to engage in such transactions.
 28 *See, e.g., CFTC v. Mintco LLC*, No. 15-cv-61960-BLOOM, 2017 WL 7736138, at *3-5 (S.D. Fla. Dec. 19, 2017) (consent order) (finding that Mintco offered leveraged or margined retail commodity transactions under 7 U.S.C. § 2(c)(2)(D) even when it merely acted as an “introducer” or “retailer” to third-party providers of metals, marketed such transactions, accepted customer orders and funds, charged a commission on the transaction, and forwarded the

1 Finally, the “actual delivery” exception is facially inapplicable to the transactions on the
2 Ooki Protocol. That exception only applies to transactions involving an antecedent “contract of
3 sale” that results in actual delivery of the underlying commodity within 28 days. Act
4 § 2(c)(2)(D)(ii)(III)(aa); *see* Act § 1a(13), 7 U.S.C. § 1a(13) (“The term ‘contract of sale’
5 includes sales, agreements of sale, and agreements to sell.”). Here, the Ooki Protocol does not
6 involve the *sale* of any commodity, but rather merely enables participants to establish a
7 leveraged position on the predicted price difference between two commodities. The Ooki
8 Protocol does not require the delivery of any purchased commodity, either within 28 days or
9 otherwise. Second, and separately, the actual delivery exception does not apply where a
10 customer’s position can be subject to forced liquidation or where the customer’s position merely
11 rolls over after 28 days. *See* Retail Commodity Transactions Involving Certain Digital Assets,
12 85 FR 37734-01 at 37743-37744 (June 24, 2020). Here, the Ooki DAO subjects customer
13 positions to forced liquidation as well as rolled over customer positions every 28 days. Thus, the
14 actual delivery exception does not apply, and transactions offered on the Ooki Protocol fall
15 within 7 U.S.C. § 2(c)(2)(D).

16
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18 In light of the Ooki DAO’s conduct relating to the leveraged or margined retail
19 commodity transactions described above, the Ooki DAO violated 7 U.S.C. § 6(a), which applies
20 to leveraged or margined retail commodity transactions (as defined by 7 U.S.C. § 2(c)(2)(D)) as
21 if those transactions were contracts of sale of a commodity for future delivery. Act §
22 2(c)(2)(D)(iii). Because the transactions offered on the Ooki Protocol are leveraged or margined
23 retail commodity transactions under 7 U.S.C. § 2(c)(2)(D), 7 U.S.C. § 6(a) applies to such
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27 orders and funds to third parties). Similarly, the Ooki DAO enters into such transactions by controlling the Ooki
28 Protocol with which traders transact; because traders transact directly with the Ooki Protocol, whoever controls the
Ooki Protocol (i.e., the Ooki DAO) enters into such transactions.

1 transactions.

2 Under 7 U.S.C. § 6(a), it is unlawful for any “person” to offer to enter into, enter into,
3 execute, confirm the execution of, or conduct an office or business in the United States for the
4 purpose of soliciting, or accepting any order for, or otherwise dealing in any transaction in, or in
5 connection with, a contract for the purchase or sale of a commodity for future delivery [i.e., the
6 leveraged and margined retail commodity transactions at issue here], unless such transaction is
7 made on or subject to the rules of a board of trade that has been designated or registered by the
8 CFTC as a contract market for the specific commodity (i.e., a DCM).

10 The Ooki DAO is a “person” under the Act and thus is subject to 7 U.S.C. § 6(a). As
11 previously detailed extensively, the Ooki DAO is an unincorporated association. *See, e.g.*, ECF
12 No. 53 at 16-23 (CFTC’s previously filed brief detailing the strong legal bases for classifying the
13 Ooki DAO as an unincorporated association under both federal and applicable state law); *see*
14 *also* ECF No. 60 at 13 (holding that the Ooki DAO has the capacity to be sued as an
15 unincorporated association under applicable law). The term “person” under the Act by its plain
16 terms includes all “associations” and does not exclude unincorporated associations. *See* 7 U.S.C.
17 § 1a(38) (broadly defining “person” to include “individuals, associations, partnerships,
18 corporations, and trusts”) (emphasis added); *see, e.g.*, *CFTC v. My Global Leverage, LLC*, No.
19 2:15-cv-00745-APG-PAL, 2016 WL 8257337, at *4 (D. Nev. Aug. 26, 2016) (default order)
20 (holding an LLC—which is neither an individual, *incorporated* association, partnership,
21 corporation, or trust—liable for violations of 7 U.S.C. § 6(a)). Here, the Ooki DAO, as an
22 unincorporated association, runs the same for-profit business as its predecessor LLC. Despite
23 changing its business structure in an attempt to evade the law, the Ooki DAO remains a “person”
24 subject to the Act and Regulations and cannot violate the law with impunity.

27 The Ooki DAO engaged in conduct that violated 7 U.S.C. § 6(a). For example, the Ooki
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1 DAO “offered to enter into,” “entered into,” and “confirmed the execution of” transactions on
 2 the Ooki Protocol. A defendant does so when it solicits customers to enter into such transactions
 3 through a website the defendant controls which enables and confirms those transactions. *See,*
 4 *e.g., CFTC v. Vault Options, Ltd.*, No. 1:16-CV-01881, 2016 WL 5339716, at *2-3, *6 (N.D. Ill.
 5 July 20, 2016) (default order) (defendants who solicited customers to trade binary options
 6 transactions—there, predictive trades on the price movement of certain commodities, indices,
 7 and foreign currencies—through websites, emails, and other communications, and enabled those
 8 customers to enter into such transactions through websites they operated, offered to enter into,
 9 entered into, and confirmed the execution of such transactions within the meaning of 7 U.S.C. §
 10 6(a)). Similarly, the Ooki DAO executes such transactions with non-ECPs by controlling the
 11 Ooki Protocol that executes such transactions. In addition, more generally, the Ooki DAO
 12 conducted business in the United States for the purpose of soliciting and accepting orders for,
 13 and otherwise dealing in, the transactions at issue (for example, through the business activities of
 14 U.S.-based Ooki DAO members and making such transactions available to U.S.-based persons).
 15 Because such transactions did not occur on a registered DCM, the Ooki DAO violated 7 U.S.C. §
 16 6(a).
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19
 20 **2. Defendant Engaged in Activities That Can Only Lawfully Be**
 21 **Performed By a Registered Futures Commission Merchant in**
 22 **Violation of Section 4d of the Act, 7 U.S.C. § 6d (Count Two).**

23 Section 1a(28) of the Act, 7 U.S.C. § 1a(28), in relevant part, defines an FCM as any
 24 individual, association, partnership, corporation or trust that engages in soliciting or in accepting orders
 25 for “any agreement, contract, or transaction described in . . . section (2)(c)(2)(D)(i)” and, in connection
 26 therewith, “accepts any money . . . or property (or extends credit in lieu thereof) to margin . . . trades or
 27 contracts that result or may result therefrom.” *See, e.g., Reed*, 2022 WL 597180, at *2-3 (holding
 28 indictment sufficiently alleged that entity operated as an unregistered FCM where entity solicited

1 and accepted orders for trades in futures contracts and other derivative products tied to the value
2 of virtual currencies, accepted virtual currency to margin and guarantee its derivative products,
3 and offered leverage to customers on certain products).

4 Under 7 U.S.C. § 1a(28), a person: (1) solicits orders by, among other things, operating a
5 website and otherwise making public statements encouraging the public to visit the website to enter
6 into relevant transactions; (2) accepts orders by, among other things, operating a website that customers
7 use to submit and enter into relevant transactions; and (3) accepts money or property to margin trades
8 when such money or property is transferred to some repository that the person controls. *See, e.g.,*
9 *CFTC v. HDR Global Trading Limited*, No. 1:20-cv-08132, 2021 WL 3722183, at ¶ 36 (S.D.N.Y.
10 Aug. 10, 2021) (consent order) (finding defendant unlawfully acted as an unregistered FCM where
11 defendant solicited non-ECPs on defendant's website and on social media to engage in leveraged
12 trading of virtual currency derivatives through defendant's website, mobile application, and by direct
13 connection to its trading engine servers; and accepted bitcoin and other property to margin
14 transactions); *Vault Options*, 2016 WL 5339716, at *2, *7 (finding that defendants unlawfully
15 operated as an unregistered FCM when they solicited orders through their websites, emails, and
16 other communications; accepted orders by facilitating customer transactions through their
17 website; and accepted funds to margin trades by having customers transfer such funds to bank
18 accounts they controlled); *CFTC v. Rosenberg*, 85 F. Supp. 2d 424, 451 (D. N.J. 2000) (holding that
19 defendant "accepted" funds to margin trades within the meaning of 7 U.S.C. § 1a(28) where the victim
20 transferred funds to an account in the defendant's name).

21 Here, during the DAO Relevant Period, the Ooki DAO solicited orders for leveraged or
22 margined retail commodity transactions through its website (which marketed and encouraged members
23 of the public to enter into leveraged or margined retail commodity transactions through the website)
24 and through the bZx Founders (who wrote articles and made public statements through social media,
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Youtube, and other forums); the Ooki DAO accepted orders for such transactions from members of the public who entered into such transactions through the Ooki DAO website; and the Ooki DAO accepted assets used to margin such transactions by possessing and controlling the Keys (as defined and described in the Complaint, *see* ECF No. 1 ¶¶ 34, 38, 41(d), 46) to the Ooki Protocol smart contracts that accepted such assets, which allowed the Ooki DAO to control the disposition of the assets in those smart contracts. Thus, during the DAO Relevant Period, the Ooki DAO acted as an FCM.

Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1), in pertinent part, makes it unlawful for any person to act as an FCM unless registered with the Commission as an FCM. The Ooki DAO has never been registered as an FCM. Thus, the Ooki DAO violated 7 U.S.C. § 6d(a)(1).

3. Defendant Failed To Implement a Customer Information Program and Failed To Implement Know Your Customer and Anti-Money Laundering Procedures in Violation of Regulation 42.2, 17 C.F.R. § 42.2 (2022) (Count Three).

Regulation 42.2, 17 C.F.R. § 42.2 (2022), provides that every FCM shall comply with the Bank Secrecy Act and related regulations, which require the FCM to adopt a CIP to facilitate KYC diligence on the FCM's customers. Regulation 42.2 applies to individuals and entities acting as unregistered FCMs. *See, e.g., HDR Global Trading Limited*, 2021 WL 3722183 at ¶ 39 (consent order finding defendant who acted as an unregistered FCM liable for failing to adopt a CIP as required by Regulation 42.2).

During the DAO Relevant Period, by acting as an unregistered FCM, the Ooki DAO was required to adopt a CIP but failed to do so, and in fact explicitly marketed the lack of KYC diligence as a positive feature of the Ooki Protocol. In so doing, the Ooki DAO violated Regulation 42.2.

IV. REMEDIES

Under Section 6c of the Act, 7 U.S.C. § 13a-1, the CFTC is authorized to seek a permanent injunction, civil monetary penalties, and equitable remedies. Consistent with that

1 statutory authority and the Court’s inherent equitable powers, the CFTC respectfully requests
 2 that the Court award a permanent injunction, civil monetary penalties, and an order to remove
 3 the Ooki DAO website from the public domain against the Defendant.

4
 5 **A. The Court Should Permanently Enjoin the Defendant.**

6 The Court should permanently enjoin Defendant from, among other things, further
 7 violating the Act and Regulations; trading on or subject to the rules of any registered entity;
 8 soliciting, receiving, or accepting funds from any person for the purpose of purchasing or selling
 9 commodity interests; and applying for registration with the CFTC. The CFTC is entitled to such
 10 relief on a showing that “a violation has occurred and is likely to continue unless enjoined.”
 11 *CFTC v. Driver*, 877 F. Supp. 2d 968, 981 (C.D. Cal. 2012). Under this standard, “[o]nce a
 12 violation is demonstrated, the [CFTC] need show only that there is some reasonable likelihood of
 13 future violations.” *CFTC v. Wilson*, No. 11CV1651, 2011 WL 6398933, at *2 (S.D. Cal. Dec.
 14 20, 2011) (quoting *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979)). The Court may
 15 consider past misconduct in determining the likelihood of future violations. *Driver*, 877 F. Supp.
 16 2d at 981.

17
 18 It is highly likely that Defendant will violate the Act and Regulations again unless
 19 permanently restrained and enjoined by the Court. While the Ooki DAO was clearly aware of
 20 the CFTC’s Complaint—and publicly deliberated whether and how to respond to it—it
 21 ultimately chose not to appear. Instead, it chose to continue to operate its unlawful business.
 22 The Court should thus order the proposed permanent injunctive relief.

23
 24 **B. The Court Should Impose Civil Monetary Penalties Against Defendant.**

25 Pursuant to Section 6c(d)(1) of the Act, 7 U.S.C. § 13a-1(d)(1), and Regulation
 26 143.8(b)(1), 17 C.F.R. § 143.8(b)(1) (2022), the Commission is authorized to seek a civil
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monetary penalty (“CMP”) equal to the higher of triple the defendant’s monetary gain from each violation of the Act or Regulations, or \$214,514 per violation (for violations committed on or after November 2, 2015). A court may “fashion a civil monetary penalty appropriate to the gravity of the offense and sufficient to act as a deterrent.” *CFTC v. Trimble*, No. 11–cv–02887–PAB-KMT, 2013 WL 317576, at *9 (D. Colo. Jan. 28, 2013) (citing *Miller v. CFTC*, 197 F.3d 1227, 1236 (9th Cir. 1999)). The civil monetary penalties the CFTC seeks from the Ooki DAO are consistent with awards and penalties in similar enforcement actions. *See, e.g., CFTC v. Laino Group Ltd. d/b/a PaxForex*, No. 4:20-cv-03317, 2021 WL 4059385, at *8 (S.D. Tex. June 30, 2021), ECF No. 21 (default order) (imposing \$374,864 CMP on defendant who committed similar registration violations to those in this case, reflecting, as here, imposition of inflation-adjusted per-violation CMPs, in amounts specified by 17 C.F.R. § 143.8); *see also, e.g., In re Payward Ventures, Inc. (d/b/a Kraken)*, CFTC No. 21-20, 2021 WL 4501468 (Sept. 28, 2021) (imposing \$1.25 CMP in connection with similar registration violations to those in this case).

Here, the Ooki DAO violated three separate provisions of the Act and Regulations. Thus, the Court should impose three times the per-violation CMP—i.e., three times \$214,514, or a total of \$643,542. This CMP is warranted to punish and deter future similar misconduct by the Ooki DAO and similarly situated entities.⁴

C. The Court Should Order Removal of the Ooki DAO’s Website.

Pursuant to Section 6c(d)(3) of the Act, 7 U.S.C. § 13a-1(d)(3), the Commission may seek equitable remedies (“including,” *but not limited to*, restitution or disgorgement) to address violations of the Act. Courts have entered orders requiring removal of the offending defendant’s website where the defendant offered unlawful transactions to the public through the website.

⁴ The CFTC is also entitled to post-judgment interest on a civil monetary penalty award ordered by the Court. Post-judgment interest accrues at the weekly average one-year constant maturity Treasury yield for the calendar week preceding the date of judgment. *See* 28 U.S.C. § 1961(a).

See, e.g., *CFTC v. J & K Futures, Inc.*, No. 11-00091-CV-W-FJG, 2011 WL 4729741, at *5-6 (W.D. Mo. Oct. 6, 2011) (default order); *CFTC v. Ortiz*, No. 11-14063-CIV, 2011 WL 2607106, at *7-8 (S.D. Fla. June 30, 2011) (default order). The Court should so order here. The Ooki DAO's website is the mechanism the public uses to access the Ooki Protocol. Thus, the Court should specifically order that the website be taken down. Importantly, the Proposed Order requires any person providing web-hosting or domain-name registration services for the Ooki DAO to take down the Ooki DAO's website. While the CFTC hopes that the Ooki DAO will comply with any order from this Court, that language addresses the possibility that the Ooki DAO will simply ignore the Court's order, as it ignored the CFTC's Complaint in this action.

V. CONCLUSION

This case presents a question striking at the heart of the U.S. government's ability to enforce its laws. The Ooki DAO believed that transforming itself into a DAO would allow it to violate numerous applicable laws without consequence. That proposition is novel, dangerous, and wrong. For the reasons above, the CFTC requests a default judgment against the Ooki DAO.

Dated: April 7, 2023

Respectfully submitted,

**COMMODITY FUTURES TRADING
COMMISSION**

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Certificate of Service

I hereby certify that on April 7, 2023, I caused a copy of the foregoing to be filed with the Clerk of the Court via the CM/ECF system as well as provided to the Defendant Ooki DAO through the Ooki DAO's Help Chat Box on the Ooki DAO website as well as by posting the foregoing to the Ooki DAO's Online Forum.

/s/ Anthony C. Biagioli
Counsel for Plaintiff